

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT OF NEW YORK  
★ FEB 14, 2007 *newd*

DAVID GARCIA,

Petitioner,

-against-

VICTOR T. HERBERT, Superintendent of  
Attica Correctional Facility,

Respondent.

-----X  
MEMORANDUM AND ~~TIME~~ AM  
ORDER  
02-CV-2052 (JBW) 07-CV-613(CRJ)  
03-MISC-0066  
Related to: 96-CV-03408  
99-CV-07657  
99-CV-01511  
99-CV-07329  
00-CV-00263

-----X  
JACK B. WEINSTEIN, Senior District Judge:

By letter dated January 26, 2007, petitioner, David Garcia, provides reasons why the writ of habeas corpus should be granted. The Clerk of the Court shall issue a new civil docket number without prepayment of fees. Petitioner may proceed in forma pauperis.

David Garcia's original petition was dismissed by this court with a judgment and a memorandum filed October 10, 2003. The petition was denied by the Court of Appeals for the Second Circuit by mandates filed May 17 and 18, 2004. This court then denied a motion for reconsideration by memorandum and order dated July 19, 2004.

The clerk of this court shall treat the letter of January 26,

*OMW*

*HS*

2007 as a second petition for a writ of habeas corpus and transfer it to the Court of Appeals for the Second Circuit as an application to authorize the district court to proceed. This court lacks power to act without permission from the Court of Appeals for the Second Circuit. See 28 U.S.C. § 2244 (b) (3).

SO ORDERED.

  
JACK B. WEINSTEIN  
SENIOR UNITED STATES DISTRICT JUDGE

Dated: Brooklyn, New York  
February 7, 2007